

**A CITIZEN GUIDE
TO THE
OFFICE OF HEARING EXAMINER**

**Making an Appeal
and
Participating in a Hearing**

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Dear Citizen:

Hearing Examiner decisions on appeals, and recommendations on other matters, have substantial impacts. As explained in the pages that follow, the Hearing Examiner's job is to review decisions made by various City agencies to ensure that they are consistent with the laws that control those agency decisions.

Because appeal hearings resemble court proceedings, the process sometimes appears both formal and formidable to those unfamiliar with legal procedures. Attorneys frequently participate, which can add to the impression that the hearings before the Hearing Examiner are "legalistic".

Controlled by laws, and having legal force and effect, the work of the Office of Hearing Examiner is "legalistic" by nature. The structured format of appeal hearings ensures a fair opportunity for all affected parties to participate. Because the rights and property of individuals are involved, this is essential. The formality inherent in the structure of hearings also acknowledges the seriousness of the matters appealed. However, these factors are not incompatible with citizen participation.

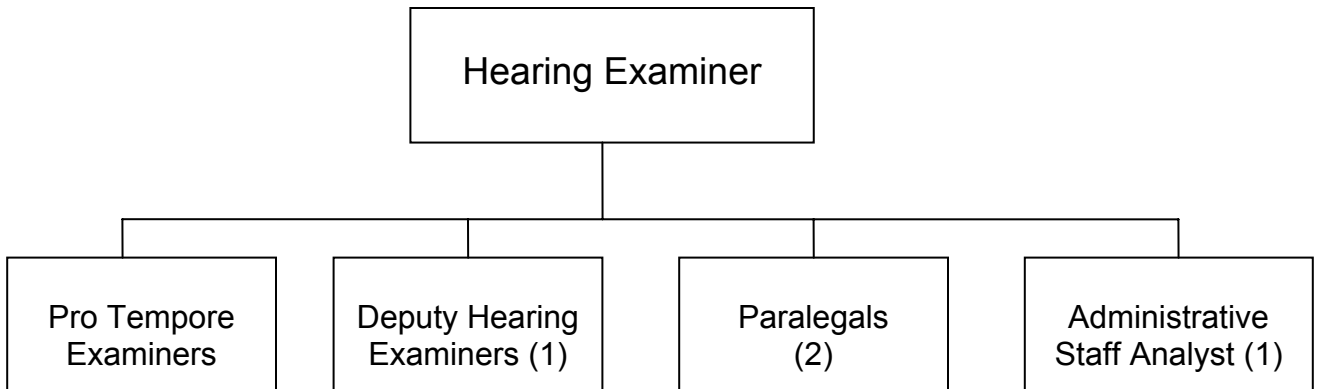
A Citizen Guide to the Office of Hearing Examiner is intended as a tool for citizens who want to understand and participate in the hearing process. The format is question-answer, and the tone is conversational. Written to help "demystify" the hearing process, this guide is primarily intended for those who will participate in an appeal. It can also be helpful for anyone interested in understanding the hearing process and the work of the Hearing Examiner. The Citizen Guide can be read from page one, through to the end, or the Table of Contents can be used to find information of particular interest.

NOTE: The conduct of hearings is governed by the "Hearing Examiner Rules of Practice and Procedure," which are available on the Hearing Examiner's web site and in hard copy from the Office of Hearing Examiner. If you will be participating in a hearing, you should review the most recent version of the Rules.

I intend that this Citizen Guide provide the assistance you need as you prepare for a hearing before the Hearing Examiner. If you have comments or suggestions for improving it, please let me know.

Sue A. Tanner
Hearing Examiner

OFFICE OF HEARING EXAMINER



NON-DISCRIMINATION POLICY

It is the policy of the Hearing Examiner that the Office of Hearing Examiner be free from discrimination on the basis of race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or any sensory, mental, or physical disability. No person shall be excluded from employment or lawful participation in the activities of this Office based upon any of those conditions.

The Office of Hearing Examiner provides barrier-free access and will provide communications and other access as is reasonably necessary to ensure participation by people with disabilities and will provide reasonable accommodations for job applicants and employees with disabilities.

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A CITIZEN GUIDE TO THE OFFICE OF HEARING EXAMINER

THE OFFICE OF HEARING EXAMINER

What is the Office of Hearing Examiner?

The Office of Hearing Examiner is a separate City department established to conduct hearings where someone disagrees with a decision made by a City agency. Before this Office was created in 1973, some of these matters were heard by the City Council, while others went directly to court. The Office of Hearing Examiner is Seattle's forum for reviewing questions of administrative law as to whether City code provisions have been correctly applied. Not every decision of every department can be appealed to the Hearing Examiner. The Hearing Examiner can only hear and decide appeals where the City's code has given authority (*i.e.*, "jurisdiction") to do so.

The City's Hearing Examiner is an independent official selected by the City Council through a procedure specifically prescribed in Seattle's Municipal Code. Appointed for a four-year term, the Hearing Examiner is responsible for all departmental functions and is authorized to appoint deputy examiners, temporary examiners, and other staff. The staff currently consists of the City Hearing Examiner, two Deputy Hearing Examiners, two Paralegals, and an Administrative Staff Assistant. Temporary, or *pro tempore* examiners (also referred to as "Pro Tems"), can be appointed in instances when the regular examiners are not available. All of the examiners must be licensed attorneys with experience in administrative hearings.

What does the Hearing Examiner do?

The basic functions of the City's Hearing Examiner are similar to those of a judge ("Administrative Law Judge" is another title for this kind of position). In the course of an appeal, the examiner is to regulate the conduct of the hearing, administer oaths, issue subpoenas, decide on procedural questions, receive evidence, hold conferences, and prepare decisions. The Hearing Examiner does not personally hear every appeal, but instead delegates some matters to the Deputies to hear and decide for the Hearing Examiner.

What decisions can be appealed to the Hearing Examiner?

More than fifty sections of the City's code authorize the City's Hearing Examiner to hold hearings and decide the outcome of appeals filed by citizens regarding decisions and recommendations made by various City agencies. The following is a brief description of the decisions that can be appealed. Beginning on page 16 is a list of the Hearing Examiner's jurisdictions.

Many of the matters considered by the Hearing Examiner are related to land use and environmental decisions made by the Department of Construction and Land Use (DCLU). Appeal hearings include land use **code interpretations** and **master use permit decisions** (e.g., environmental determinations and conditioning of development projects, short plats, variances, conditional uses). The Hearing Examiner makes the City's decision regarding subdivision proposals. There are also public hearings regarding **rezones**, **council conditional uses**, and **major institution master plans**, where the Hearing Examiner makes a recommendation to the City Council for its action. Other DCLU decisions appealable to the Hearing Examiner include: **Tenant Relocation Assistance Program eligibility**, **critical areas exceptions**, **design review decisions**, **grading permits**, and **stop work orders**. **Floating home moorage fee increases** are also appealable to the Hearing Examiner.

State Environmental Protection Act (SEPA) decisions, including determinations as to the adequacy of environmental impact statements, whether they are prepared by DCLU or any another City department, are appealable to the Hearing Examiner.

Decisions made by the Department of Neighborhoods and its advisory boards and commissions regarding **historic landmarks** and **special districts** are also appealable. Landmarks Preservation Board decisions on the issuance or denial of certificates of approval for changes in landmarks, and the Board's recommendations for **landmark controls**, can be subjects of appeal. Appeals can also be brought regarding decisions on **certificates of approval** for changes in special districts (e.g., **Pioneer Square** and **International District** Special Review Districts, **Pike Place Market** Historical District).

The Hearing Examiner has jurisdiction to review complaints brought by individuals and the Human Rights Department under the **City's Fair Employment** and **Unfair Housing Practices** ordinances and can hear matters referred by the **Ethics and Elections Commission** and by the **Civil Service Commission**.

Appeals from **licensing** decisions and **Business and Occupation Tax assessments** made by the Director of Finance are heard and decided by the Hearing Examiner. The Department of Public Health's determinations of **noise** and **radiation ordinance violations** are also within the Hearing Examiner's jurisdiction.

The Hearing Examiner also hears appeals of enforcement of the City's **Public Nuisance Ordinance** and the **Graffiti Nuisance Ordinance**.

MAKING AN APPEAL

How do I appeal a decision?

In Writing: All appeals must be in writing. The Hearing Examiner has forms available that may be used to appeal DCLU land use or environmental decisions, or for licensing appeals. Please request an appeal form from the Office of Hearing Examiner. If you want to appeal some other type of decision, or don't want to use the form, a letter of appeal is acceptable.

Correspondence to the Hearing Examiner is best addressed "Dear Hearing Examiner". "Dear Sir" and "Gentlemen" are not accurate or appropriate salutations.

Identify who is making the appeal: Include the name, address, and phone number of the person making the appeal (*i.e.*, the "appellant"). If an appeal is made jointly by several individuals, list the name, address, and phone number for each person and specify one person as the official contact person. If the appeal is made on behalf of an organization, identify the organization by name, and indicate the name, address, phone number, and fax number (if available) of the official contact person.

Identify the decision being appealed: Name the department which made the decision being appealed, date of decision, decision number (if any has been provided), and if property is involved, include the property address. If not all of the decision is being appealed, indicate which parts are being appealed.

Indicate your interest in the decision or how you are affected by it: How the decision affects your property, your eligibility, your neighborhood, etc.

Indicate your objections to the decision: Briefly explain or describe what you believe to be incorrect about the decision. What is wrong with it? Be as specific as you can, but also be brief. Note any errors, omissions, etc.

Indicate what you want the Hearing Examiner to do: State what relief you seek. Examples: reverse the decision, modify conditions, require an EIS, lower the assessment, lift the violation, etc.

Mail or Deliver the Appeal to:

Office of Hearing Examiner
1320 Alaska Building
618 Second Avenue
Seattle, Washington 98104-2222

Important Note: In order for the Hearing Examiner to be able to consider your appeal, it **MUST BE RECEIVED BY THE OFFICE OF HEARING EXAMINER BY 5 PM OF THE LAST DAY OF THE APPEAL PERIOD**. A postmark on the last day is not sufficient. The length of an appeal period is established by the ordinance that governs the decision being appealed. **The Hearing Examiner does not have the authority to change or extend an appeal period. If the appeal is not filed in time, it must be rejected.**

It would be wise to submit your appeal as soon as you have decided that you want to appeal. If you wait until the last minute, you could miss the deadline and lose the opportunity to appeal. If you are not sure of when an appeal period will end, contact the department that issued the decision you want to appeal. The notice of decision should list a contact person and telephone

number. If the notice of decision doesn't have this information, call the Office of Hearing Examiner. We may be able to help.

Required Fee: A filing fee is required for most appeals. Exceptions to this general rule include: tenant relocation assistance, discrimination complaints, rezones, and landmarks controls and incentives. If you are not sure of the amount of fee or whether a fee is required, check with the Office of Hearing Examiner.

An appeal is not complete without the required fee. A check (made out to the City Treasurer) is preferred. If you file in person, cash is acceptable, but please do not send cash through the mail. The filing fee is nonrefundable. The Hearing Examiner may waive a required filing fee if the fee poses a financial hardship for the person wishing to appeal. (There is a form available to request a waiver of the appeal fee.)

Do I have to have an attorney?

It is not necessary to have an attorney and you don't have to be an attorney to represent yourself or someone else in a proceeding before the Hearing Examiner. A number of measures help make the process more accessible and "user friendly" for non-lawyers. This booklet, the use of everyday English (rather than "legalese"), a form to use for some types of appeals, and encouraging procedural questions, are among the means currently being used by the Hearing Examiner to make the process understandable and to help participants feel comfortable.

In recognition of the importance of the issues to those involved, as well as the legal effect of the outcome, hearings have a structured format. That structure, and the examiner's control of the proceedings, help to ensure that all participants have a fair opportunity to present relevant evidence regarding their points of view.

Appeal hearings are by their nature "legal" proceedings established by law and having legal force and effect. Some persons involved in appeal hearings have lawyers to represent them, but many citizens represent themselves. Although representation by an attorney is never required, for some complex appeals with difficult legal and factual issues, it may be advisable.

What happens if more than one appeal is filed regarding the same decision?

When this happens, and it often does with land use and environmental decisions, the Hearing Examiner will consolidate the appeals. This means that one hearing will be held, but each party who has appealed will have an opportunity to make a presentation and to question witnesses. Those who have appealed separately may voluntarily join together to make a joint presentation at the hearing.

If I'm not sure about what to do, who should I ask?

You can always check with the Office of Hearing Examiner when you have questions. When you are participating in a hearing and you are unsure of the procedure or what you should be doing, you can ask the examiner to explain. Before and after the hearing, prior to the decision being issued, you may have to direct your questions to someone on staff other than the examiner who is hearing the appeal. This is necessary to avoid violating the prohibition on communicating with the examiner outside the actual hearing (such communications are referred to as *ex parte* contacts and are prohibited by law).

Questions about how to put together your presentation, what questions to ask which witness, who to have speak, whether to get a lawyer to help, etc., are not the kind of issues that the Office of Hearing Examiner can help you with. We can answer procedural questions, explain the process, describe how hearings usually run, and what to expect. Staff of the Office of Hearing Examiner cannot get involved or give advice that would assist with someone's presentation because this could be interpreted as advocating for that person's position. (Note: It may be helpful to observe a hearing of a similar kind of appeal, before your hearing is held.)

What if later I change my mind about appealing?

If you change your mind and do not want to go through with an appeal, notify the Hearing Examiner in writing. You do not have to explain why you are withdrawing your appeal, but a withdrawal needs to be in writing and signed by the person who filed the appeal. (The person named as the official contact person can withdraw an appeal made by several individuals or a group.) If there is not enough time to get the written withdrawal to the Office of Hearing Examiner before the scheduled hearing, you should telephone the Office and then follow-up with your letter of withdrawal. (The filing fee is nonrefundable.)

THE APPEAL HEARING

NOTE: In addition to "appeal hearings" held regarding appeals of decisions made by City agencies, the Hearing Examiner also holds "public hearings" as a part of preparing recommendations for the City Council on rezone requests, master plans, landmarks controls, and similar matters. The following section describes the appeal hearing; public hearings are discussed on page 15.

When will the hearing be held? What notice is given?

When an appeal is filed, the Hearing Examiner schedules a hearing on the first available date that is consistent with the minimum time required for notice. (When an "automatic" appeal is provided by law, the hearing date is included in the notice of violation.) The minimum number of days that must be allowed between notice of a hearing and the holding of the hearing, varies with the type of appeal. (Many appeals require a 20 day notice prior to hearing, but there are also other lengths of time.) Hearings must be set far enough in advance to allow the required notice period.

When there are many appeals to be heard, more time elapses between the filing of an appeal and the holding of the hearing than the minimum time required by the notice period. Recently the time elapsed between filing and hearing has been 6 to 7 weeks. Some types of appeals are required to be heard within a specified number of days and therefore must be scheduled in a shorter time-frame. In extraordinary circumstances a matter may be heard out of turn.

After a hearing date has been scheduled in response to the filing of an appeal, a notice is distributed. With most land use and environmental appeals, DCLU is responsible for sending the notice. With other matters, the Office of Hearing Examiner will send a notice to the person(s) who appealed and others directly involved. The notices are sent by regular mail.

Can the date established for a hearing be changed?

After receiving the notice of hearing, if a participant or some person(s) vital to the presentation is unable to attend on the date specified, the participant should write to the Hearing Examiner, explain the conflict and request that a different hearing date be scheduled (this is referred to as a "continuance"). It is helpful also to indicate when you would be available. The person making the request also sends a copy of it to the other participants (these names and addresses can be obtained from the Office of Hearing Examiner). The Hearing Examiner may respond by providing several possible dates and ask the party requesting the change to contact the other participants to arrange a mutually satisfactory date.

How long will the hearing last?

There is no set time limit (minimum or maximum) for hearings. A hearing can take as little as an hour, many take several hours, and some take more than a day. The length of the hearing is determined primarily by the complexity of the issues that need to be presented.

Where will the hearing be held?

Hearings are held in the Office of Hearing Examiner which is located on the 13th Floor of the Alaska Building. (The map on page 8 shows the location of the Alaska Building and major streets in the vicinity.) There are two rooms used for hearings: the Hearing Room (Room 1310) and the Conference Room (Room 1325). To locate a hearing, come to the 13th floor and check the hearing schedule posted outside the Hearing Room (you could also inquire in Room 1320).

How do I get there? Where can I park?

Located in the Alaska Building, at 618 Second Avenue, between Cherry and James Streets in downtown Seattle, the Office of Hearing Examiner is wheelchair accessible.

Metro bus lines run along Second and Third Avenues. If you need assistance with determining which bus routes to use, call Metro at 553-3000 (tell them you want to get to Second and Cherry and they can tell you which bus to take). Metro's Pioneer Square Station is nearby on Third Avenue, between Cherry and James Streets.

Available only on a first-come, first-serve basis, parking on the street in the vicinity is very limited. The on-street spaces have meters which cost at least \$1 per hour and have a two-hour maximum. There is also metered parking at the Municipal Building (on the Fifth Avenue side of the building, and between Cherry and James Streets; see the map on page 8).

Several private parking lots and garages are located within a few blocks:

- Garage on Cherry Street between Second and Third Avenues
- Garage on James Street between Second and First Avenues
- Lot in 500 block of Second Avenue between James Street and Yesler
- Garages on First Avenue between Columbia and Cherry Streets
- Lot on First Avenue between Cherry and James Streets
- Garage/lot at corner of Fourth Avenue and Cherry Street
- Garages at NW & SW corners of Fourth Avenue and Columbia Street

If you decide to drive, parking at one of the nearby private facilities is the best choice despite the cost. Car-pooling and sharing the cost of parking can reduce the expense and eliminate a great deal of frustration and worry.

Who will participate in the hearing?

Unlike the familiar "public hearing", where anyone who has information or an opinion has an opportunity to share it with the decision-makers, testimony at an appeal hearing comes only from the participants and those called by them as witnesses. All appeal hearings are open to the public so that interested persons can observe the proceedings. The participants are referred to as "parties". The party who appeals is the "appellant" and in most appeals, the City agency responsible for the decision is the "respondent" (i.e., the one who must respond to the objections raised in the appeal). If the appeal involves an applicant for a permit or license who is not the appellant, this applicant also is a "party" who has a right to participate in the hearing. (Such a person is also called a "respondent".) Parties to an appeal have certain rights in the hearing process, including the right to notice and participation (presenting evidence and questioning witnesses).

Appeal hearings regarding DCLU land use and environmental decisions often have an appellant who is not the person seeking a permit. Sometimes the permit applicant and persons opposed to the proposal will appeal the same decision. It is also not unusual for several individuals and/or groups to appeal. Each appellant is considered a "party", but each group must select one person to represent them in the proceedings.

The Hearing Room, where most hearings are held, has several large tables in the front. Although it is subject to change, the arrangement of parties is generally as follows. The examiner and an assistant sit at the front table, facing the audience. When called to testify, each witness sits at the table facing the examiner. Parties to the appeal (appellant and respondent) sit at the tables to the left and right of the examiner, facing one another. When there are three parties -- appellant, applicant (either as appellant or respondent), and City agency -- the City representative sits at the table facing the examiner, sharing that table with the witness.

What can I do if I have an interest in the outcome but didn't appeal?

Upon a showing of substantial interest (not otherwise represented by the parties), someone who does not object to the decision can request to become an "intervenor". An intervenor becomes a participant in the hearing and, like the original parties, has a right to appeal the Hearing Examiner's decision. The Hearing Examiner may grant intervenor status if participation by the intervenor will not add issues to the appeal or unduly complicate or lengthen the appeal process. Requests for intervention are not always granted and must be made before the hearing begins so the parties have a fair opportunity to respond (see Hearing Examiner Rule 3.09).

Is there an established agenda or order to the hearing?

Generally the order of an appeal hearing is:

1. Hearing Examiner's opening remarks
2. Opening statements (briefly indicate what will be presented; often this is omitted or used as an introduction to the presentation)
3. Appellant's presentation of evidence (testimony, witnesses, exhibits)
4. City agency's presentation of evidence (testimony, witnesses, exhibits)
5. Applicant's presentation of evidence (if applicant is not appellant)
6. Rebuttal
7. Closing arguments (summarizing)

What should I do to prepare?

All parties to an appeal try to show that both the facts and the law support their view. To do this, the parties should prepare by finding out about both. There is no set formula for what to do in preparation for a hearing. The effort necessary is directly connected with the number and nature of the issues on appeal. Preparing may simply be figuring out what you want to say in your own testimony, or it may be more complicated, requiring that a number of lay witnesses and experts be organized and coordinated so that each covers a different facet of the presentation.

Basic suggestions for what to do when preparing for hearing are:

Review the decision that is being appealed. Get a copy of the decision from the City agency that made it. (If you have difficulty getting a copy of the decision, call the Hearing Examiner's Office, we may be able to help.) The decision is central to the appeal; examine it to find the area(s) which you believe are incorrect. If there is a file kept by the City agency regarding the decision, reviewing it also could be helpful.

Review the part(s) of the Seattle Municipal Code that control the decision being appealed. Most branches of the City library system have a copy of the Code (call your local branch first to be sure it's there). The Code is also available electronically via the City's Public Access Network at <http://www.pan.ci.seattle.wa.us/>. See pages 16 and 17 for a listing of many of the applicable code sections.

Find people who are knowledgeable about the situation that is the subject of the decision being appealed. As an example, if there are environmental issues on appeal, you could talk with others who live nearby to learn more about the existing conditions in the area. If there are technical issues, you may want to seek expert advice.

Review the information in this section about participating in the hearing. Decide what evidence you want to present about the issues on appeal and who you want to have testify.

Who speaks at the hearing?

As mentioned above, unlike a "public hearing" where anyone who wishes to speak has that opportunity, the persons who have a right to speak at an appeal hearing are limited. The participants, or "parties" as they are called, and those persons called by the parties as witnesses, have the opportunity to speak during the appeal hearing. A representative of each party sits at the front table, coordinates the party's presentation, introduces and asks questions of the party's witnesses, asks questions of the other parties' witnesses, and talks with the examiner about procedural concerns if any arise during the hearing.

If you are representing yourself in the appeal, you are the party representative. When it's your turn to present evidence, you can give testimony yourself. You can ask others to appear as witnesses, but you need to take care that they don't repeat information.

Often in master use permit appeals of environmental decisions, different witnesses testify about different subjects. For example, in an appeal hearing, witnesses for the neighborhood appellant group were: a neighbor who gave information about traffic conditions in the neighborhood and the results of a parking study that the neighbors had prepared; a neighbor who described the neighborhood and presented photographs; and a neighbor with a degree in geology, who testified about problems of slope stability. The party representative called each witness and got the testimony started by indicating the topic (e.g., "Mr. Smith will talk about the parking study conducted by the neighbors...").

You should know what your witnesses are going to say. It is a good idea to meet with each witness before the hearing and discuss his/her testimony. This will help you to coordinate the presentation and to anticipate questions. Witnesses are required to take an oath or affirmation to tell the truth. All witnesses can be questioned by the other parties; this is called "cross-examination."

Should I bring photographs, drawings, models, written materials?

It is not required that you provide any such materials, but they are often offered by parties because they can illustrate or make a point, or add clarity and understanding. Such items are called "exhibits". Each exhibit is given a number so that everyone will know which exhibit is being discussed. If you have exhibits, come to Room 1320 a few minutes prior to your scheduled hearing time, so that we can mark them with individual numbers.

Because you will be submitting your exhibits to the Hearing Examiner, it is important that you bring copies of the exhibits for yourself AND for each of the other parties. Generally this means that you need to have the original and three copies. It is not necessary to bring copies of large exhibits, photos, etc., that are difficult to copy.

During the course of your presentation when you use the exhibits, it is helpful to refer to them by the numbers given to them by the examiner ("Here is a photograph of the garage, it is marked as Exhibit #4."). If you want an item to be included in the record, you should offer it as an exhibit and the examiner will decide if it is admissible (see the next question regarding objections). The other parties can ask questions about an exhibit ("When was the photograph taken?" "What is the scale of this drawing?"), and about the reliability of its source ("Where did you get the height information you used to draw my house?").

If there is no appeal of the Hearing Examiner's decision, exhibits can be released to the party who submitted them 60 days after the end of the appeal period specified in the decision. Unclaimed exhibits that are too large to be stored with the file will be discarded. If you want particular exhibits returned, you need to notify the Office of Hearing Examiner in writing. If the

Hearing Examiner's decision is appealed to Superior Court, all the exhibits stay as part of the file until that appeal is finally resolved.

NOTE: Because parties have a right to ask questions of each other's witnesses, it is problematic to attempt to introduce written statements from someone who is not present. Often such statements, letters, etc., cannot be included in the record of decision.

What happens if someone objects to some testimony or exhibit?

The rules regarding what evidence can be used in administrative hearings are not as strict as those used in court. Basically, anything that is relevant, comes from a reliable source, and has value in proving something at issue in the appeal, can be used. If a party believes some testimony or exhibit is not relevant, that party can object to it coming into the record to be considered by the examiner. When there is an objection, the examiner may ask the parties to comment, then will decide (or "rule") on the objection.

For example, during an appeal of a variance decision for a deck in a required yard, if someone wanted to present evidence about the occupation of the applicant, there might be an objection that such information is not relevant. The examiner would "sustain" the objection if he/she agrees that the information is not relevant. If the examiner disagrees, the objection would be "overruled" and the information would become part of the record. This may sound like "Perry Mason" but it is not really very mysterious. If you are not sure what an objection means, ask the examiner to explain.

What should I do if I have questions about what is happening, or I don't know what I'm supposed to do during the hearing?

As mentioned above, if you have questions or are unsure of what to do, you should ask the examiner. The examiner is not allowed to help present anyone's case, but can and will explain and clarify what is going on.

Are there restrictions on talking to the examiner?

No one is to talk to the examiner about the merits of an appeal except during the hearing. Talking with the examiner outside of the hearing is prohibited except for procedural matters. This rule is to prevent people from trying to influence the examiner or add information that is not presented at hearing where all parties can discuss and question it.

If questions or problems arise outside of the hearing, you should ask to speak to someone other than the examiner who is assigned to hear your appeal.

What is a Pre-hearing Conference?

This is a meeting held prior to the hearing to help sort out, simplify, and clarify the issues and procedural aspects of the hearing. Typical topics for a pre-hearing conference would include identifying who the witnesses will be, how long the presentations are expected to take, and whether the subjects included in the appeal are within the Hearing Examiner's jurisdiction. Any party can request a pre-hearing conference, but because all parties are required to be

represented, it can be a significant inconvenience, so the examiner needs to be shown there is a good reason for a pre-hearing conference before ordering one.

What are "motions" and "orders"?

A "motion" is a request; a way of asking the Hearing Examiner for something. You do not need to call your requests "motions". For example, if you were going to be out of town on the scheduled hearing date, you could write to the Hearing Examiner and state: "I will be out of town on the date scheduled for the hearing, so I request that you change the date to sometime after July 9th." A lawyer might submit a "Motion for Continuance" with the same information, which is just a different way of saying the same thing. Either approach is acceptable.

When you are involved in an appeal, you might receive a copy of a motion that another party has submitted to the Hearing Examiner. (Any party who writes to the Hearing Examiner must send a copy of the correspondence to each of the other parties.) Do not be thrown by the legal format. Read through the motion to determine what the Hearing Examiner is being asked to do; if you disagree with the motion, you should send a written response/comment to the Hearing Examiner within seven days. Unless some other timing is specified, after seven days have passed, the parties who do not respond can be presumed to agree with the motion.

An "order" is a requirement or direction to the parties made by the Hearing Examiner. Be sure to read all orders carefully. Call the Office of Hearing Examiner if you have questions.

Are there "rules" for the participants?

The Hearing Examiner has adopted rules, the "Hearing Examiner Rules of Practice and Procedure", which govern proceedings before the Hearing Examiner. The Rules establish the procedural framework for handling appeals and conducting hearings. For a copy of the Rules, contact the Office of Hearing Examiner.

Everyone who participates in a hearing is expected to be punctual, courteous, and prepared. When addressing the examiner at hearing, it is equally acceptable to use that person's name or title (e.g., "Ms. Smith" or "Ms. Hearing Examiner"). Other parties are addressed by their last names or by party status (e.g., "Mr. Smith" or "The Appellant"). No smoking, food, or beverages are allowed in the hearing rooms.

THE HEARING EXAMINER'S DECISION

What does the Hearing Examiner consider when making the decision?

The Hearing Examiner is required to make decisions on appeals based what the code requires and the evidence presented at the hearing. The Hearing Examiner can neither uphold nor overturn a City agency decision because of popular opinion or public comment.

The Hearing Examiner is not to change or create law, and it is not unusual for a decision to have a different outcome from that which an examiner might personally prefer.

What is in a decision?

A caption, showing the name of the appellant, the nature of the appeal, and other identifying information is at the top of the first page. The body of the decision follows, beginning with an "Introduction" presenting basic background and procedural information. The next section is "Findings of Fact" -- the individual pieces of evidence that the examiner has found relevant, credible, and necessary for the conclusions and decision. Based upon those Findings, the examiner draws "Conclusions" which comprise the next section and determine the outcome. The "Decision" section is last, followed by a postscript as to how the decision can be appealed.

When is the decision issued?

Some decisions have deadlines imposed by Code or statute. The record may be left open for a site visit or for information to be filed after the hearing. All decisions are mailed, but you may request to be notified by telephone as soon a decision is issued so that you can come get a copy if you so desire. Staff cannot tell you the outcome of a decision over the telephone.

Who gets the decision?

A copy of the decision is mailed to each party representative, and to others who have specifically requested to receive it.

If I am not satisfied with the decision, how do I appeal?

The postscript at the end of the decision indicates what opportunity there is for further review. Most Hearing Examiner decisions are the City's final decision and must be appealed directly to Court.

OTHER KINDS OF HEARINGS

What other kinds of hearings does the Hearing Examiner conduct?

In addition to appeal hearings previously described, the Hearing Examiner also holds public hearings regarding the following:

- Council conditional use and other Council land use actions
- Rezone proposals
- Major institution master plans
- Planned unit developments
- Landmark controls and incentives

How are these hearings different from appeal hearings?

The fundamental and most important distinction between this type of hearing and the appeal hearing previously described, is that the Hearing Examiner does not make a decision, but instead holds a public hearing on behalf of the City Council in order to gather information and make a recommendation to the Council. The hearing has two purposes: it informs the Hearing Examiner and it forms part of the record that will be sent to the City Council.

Generally, anyone who wishes to be heard will have an opportunity to speak, but it is sometimes necessary to limit the amount of time available to each speaker. Written comments are acceptable and become part of the record sent on to the City Council. The Hearing Examiner tries to arrange the hearing schedule so that members of the public can speak first.

After the end of the hearing, the examiner prepares the Hearing Examiner's recommendation, which is sent to the City Council along with all the exhibits and other materials in the record of hearing. The City Council will use this record as the basis for its decision. The Hearing Examiner's recommendation will be sent to those who request a copy.

HEARING EXAMINER JURISDICTIONS

(*Denotes Hearing Examiner Recommendation to Council)

LAND USE AND ENVIRONMENTAL DECISIONS

Administered by Department of Construction & Land Use

- Master Use Permit (MUP procedural requirements generally: SMC 23.76.022)
 - Variance (SMC 23.40.020)
 - Short plat (SMC 23.24.040)
 - Administrative Conditional Use (SMC 23.44.022)
 - Design Review (SMC 23.41.020)
 - Street Use (SMC 15.16)
- Land Use Code Interpretation (SMC 23.88.020 and specific sections)
- Environmental Determinations:
 - Determination of Non-Significance/ No EIS required (SMC 25.05.340)
 - Conditions of MUP decision(SMC 25.05.660)
 - Adequacy of EIS (SMC 25.05, Subchp. IV)
- Environmentally Critical Areas Reasonable Use Exceptions (SMC 25.09.300)
- Council Conditional Use* (SMC 23.44 and 23.50.014D)
- Subdivisions (SMC 23.76.052 and 23.22)
- Rezone Requests* (SMC 23.34)
- Major Institution Master Plan* (SMC 23.69, Subchp. VI, Part 2)
- Tenant Relocation Assistance Eligibility (SMC 22.210.100)
- Stop Work Orders for MUPs (SMC 23.76.034)
- Downtown Housing Maintenance (SMC 22.220.140)
- Housing & Building Maintenance Code (unfit for habitation: SMC 22.208.050)
- Stormwater, Grading & Drainage (Exceptions and Enforcement : SMC 22.808.040)
- Relocation Assistance: City action causes displacement (SMC 20.84.160)
- Pioneer Square Minimum Maintenance (SMC 25.28.300)
- Design Review Decisions (SMC 23.41.014 and 23.76)
- Accessory Dwelling Unit Violation (SMC 23.90.019)

DISCRIMINATION COMPLAINTS and WMBE SANCTIONS

Administered by the Office for Civil Rights

- Employment Discrimination (SMC 14.04.170)
- Fair Housing/Business Practices (SMC 14.08.170)
- WMBE Sanctions (SMC 20.46A.190)

SCHOOL USE / DEVELOPMENT STANDARDS

Administered by Department of Neighborhoods

- School Reuse/SUAC (SMC 23.78.014)
- School Development Standard Departure (SMC 23.79.012)

PERSONNEL-RELATED COMPLAINTS

- Ethics (SMC 3.70.100) - Delegation from Ethics & Elections Commission
- Civil Service (SMC 4.04.250) - Delegation from Civil Service Commission

LANDMARKS AND SPECIAL DISTRICTS

Administered by the Department of Neighborhoods

Recommended Controls and Incentives* (SMC 25.12.530)
Certificates of Approval for Designated Sites/Objects (SMC 25.12.740)
Interpretations (SMC 25.12.845)
Special Review District Certificates of Approval and Interpretations
Pioneer Square Historical District (SMC 23.66.030)
International District (SMC 23.66.030)
Pike Place Market Historical District (SMC 25.24.080 and SMC 25.24.085)
Harvard Belmont Landmark District (SMC 25.22.130 and SMC 25.22.135)
Ballard Avenue Landmark District (SMC 25.16.110 and SMC 25.16.115)
Columbia City Landmark District (SMC 25.20.110 and SMC 25.20.115)

HEALTH CODE VIOLATIONS

Administered by Seattle-King County Department of Public Health

Noise Ordinance (SMC 25.08) [Administered by DCLU]
Radiofrequency Radiation Ordinance (SMC 25.10)
Food Code Permit denial, suspension, revocation (SMC 10.01.220)

CITY TAX AND LICENSES

Administered by the Executive Services Department

Business and Occupations Tax determinations (SMC 5.44.230)
City License suspension & revocation; bond claims (SMC 6.02.080 and .290)
Admission Tax Exemption (SMC 5.40.085)
Unit Pricing (SMC 7.12.090)
Animal License denial (SMC 9.25.120)
Determination of Viciousness/Order of Humane Disposal (SMC 9.25.036)
Panorama and Peepshows (SMC 6.42.080)
Business District Assessments (Ordinance 116021)

LOCAL IMPROVEMENT DISTRICTS

Administered by the Department of Transportation

Assessment Roll Determinations (SMC 20.04.090)

CABLE COMMUNICATIONS

Administered by the Executive Services Department

Franchise Termination (SMC 21.60.180)
Rates and Charges (SMC 21.60.310)

PUBLIC NUISANCE

Public Nuisance Ordinance (SMC 10.09.100) [Administered by Seattle Police Department]
Graffiti Nuisance (SMC 10.07.050) [Administered by Seattle Public Utilities]

MISCELLANEOUS

Petitions For Review of Floating Home Moorage Fee Increase (SMC 7.20)
Contract Bid Award Protests (SMC 3.18.150) [Administered by Executive Services Department]